



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### [EPA-R10-OAR-2014-0753, FRL-9918-86-Region 10]

#### Approval and Promulgation of Implementation Plans; Alaska: Nonattainment New Source Review

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Alaska State Implementation Plan (SIP) submitted by the Commissioner of the Alaska Department of Conservation (ADEC) on December 11, 2009, November 29, 2010, December 10, 2012, January 28, 2013, July 1, 2014, and October 24, 2014. These revisions update the State of Alaska's adoption by reference of the Federal preconstruction permitting regulations for large industrial (major source) facilities located in designated nonattainment areas, referred to as the Nonattainment New Source Review (major NNSR) program. The major NNSR program is designed to ensure that major stationary sources of air pollution are constructed or modified in a manner that is consistent with attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2014-0753,

by any of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- Mail: Donna Deneen, EPA Region 10, Office of Air, Waste and Toxics (AWT-150),  
1200 Sixth Avenue, Suite 900, Seattle WA, 98101
- Email: [R10-Public\\_Comments@epa.gov](mailto:R10-Public_Comments@epa.gov)
- Hand Delivery: EPA Region 10 Mailroom, 9<sup>th</sup> Floor, 1200 Sixth Avenue, Suite 900,  
Seattle WA, 98101. Attention: Donna Deneen, Office of Air, Waste and Toxics, AWT-150. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R10-OAR-2014-0753. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM

you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle WA, 98101.

**FOR FURTHER INFORMATION CONTACT:** Donna Deneen at telephone number: (206) 553-6706, e-mail address: [deneen.donna@epa.gov](mailto:deneen.donna@epa.gov), or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we”, “us” or “our” is used, it is intended to refer to the EPA.

## **Table of Contents**

- I. Purpose of Proposed Major NNSR Action
- II. Background for the Proposed Major NNSR Action
- III. Effect of the January 4, 2013 D.C. Circuit Decision Regarding PM<sub>2.5</sub> Implementation Under Subpart 4
- IV. Alaska’s Revisions to Major NNSR
- V. Proposed Action
- VI. Statutory and Executive Order Reviews

## **I. Purpose of Proposed Major NNSR Action**

The EPA is proposing to approve revisions to the Alaska SIP related to major NNSR submitted by ADEC on December 11, 2009, November 29, 2010, December 10, 2012, January 28, 2013, July 1, 2014, and October 24, 2014.<sup>1</sup> Alaska's major NNSR program essentially adopts by reference the Federal preconstruction permitting regulations for major sources in nonattainment areas at 40 CFR 51.165 (Permit Requirements). The key changes in Alaska's SIP revisions are the update of the adoption by reference citation dates in 18 AAC 50.040(i) to the Federal rules in 40 CFR 51.165, and the updated definition of "regulated NSR pollutant" in 18 AAC 50.040(i)(1)(B) to reflect the current Federal definition of "regulated NSR pollutant" for nonattainment areas at 40 CFR 51.165(a)(1)(xxxvii). These and other related revisions addressed in this action are discussed below.

In a previous action relating to the revisions submitted on December 11, 2009, November 29, 2010, December 10, 2012, and January 28, 2013, the EPA deferred action on the portions of those submittals relating to major NNSR. (September 19, 2014; 79 FR 56268). In this proposal we are taking action on the deferred portions of those submittals. In this action we are also addressing the major NNSR portion of revisions submitted on July 1, 2014 and October 24, 2014. Where there are multiple amendments to the same provision, we have limited our review to only the most recently submitted amendment to any particular provision. We intend to address the remaining portions of the SIP submittals that are not related to major NNSR, and that we have not yet acted on, in one or more separate actions.

## **II. Background for the Proposed Major NNSR Action**

On July 18, 1997, the EPA revised the NAAQS for particulate matter to add new

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<sup>1</sup> This submittal also withdrew a September 24, 2014, submittal determined to contain an error.

standards for fine particles, using PM<sub>2.5</sub> as the indicator. Previously, the EPA used PM<sub>10</sub> (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the particulate matter NAAQS. The EPA established health-based (primary) annual and 24-hour standards for PM<sub>2.5</sub>, setting an annual standard at a level of 15 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) and a 24-hour standard at a level of 65  $\mu\text{g}/\text{m}^3$  (62 FR 38652). At the time the 1997 primary standards were established, the EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of PM<sub>2.5</sub>, such as visibility impairment and materials damage. The State of Alaska had no areas violating the annual or 24-hour 1997 PM<sub>2.5</sub> NAAQS at the time the standards were promulgated.

On October 17, 2006, the EPA revised the primary and secondary PM<sub>2.5</sub> NAAQS (71 FR 61236). In that rulemaking, the EPA lowered the 24-hour PM<sub>2.5</sub> NAAQS to 35  $\mu\text{g}/\text{m}^3$  and retained the existing annual PM<sub>2.5</sub> NAAQS of 15  $\mu\text{g}/\text{m}^3$ . In 2009, as a result of the change in the 24-hour PM<sub>2.5</sub> NAAQS from 65  $\mu\text{g}/\text{m}^3$  to 35  $\mu\text{g}/\text{m}^3$ , the EPA designated Fairbanks, Alaska as nonattainment based on 2006-2008 monitoring data (74 FR 58688, November 13, 2009). The Fairbanks PM<sub>2.5</sub> nonattainment area covers the expanded part of Fairbanks North Star Borough (FNSB) and is currently the only nonattainment area in the State of Alaska.

On May 16, 2008, the EPA finalized a rule to implement the PM<sub>2.5</sub> NAAQS, including changes to the New Source Review (NSR) program (2008 NSR PM<sub>2.5</sub> Rule, 73 FR 28321). The 2008 NSR PM<sub>2.5</sub> Rule revised the NSR program requirements to establish a framework for implementing preconstruction permit review for the PM<sub>2.5</sub> NAAQS in both attainment and

nonattainment areas. The 2008 NSR PM<sub>2.5</sub> Rule also established the following NSR requirements to implement the PM<sub>2.5</sub> NAAQS: (1) required NSR permits to address directly emitted PM<sub>2.5</sub> and precursor pollutants; (2) established significant emission rates for direct PM<sub>2.5</sub> and precursor pollutants, including sulfur dioxide (SO<sub>2</sub>) and oxides of nitrogen (NO<sub>x</sub>); (3) established PM<sub>2.5</sub> emission offsets for nonattainment areas; and (4) required states to account for gases that condense to form particles in PM<sub>2.5</sub> emission limits. Alaska's regulations, submitted to the EPA on December 11, 2009, November 29, 2010, December 10, 2012, January 28, 2013, July 1, 2014, and October 24, 2014, were revised to address the requirements of the 2008 NSR PM<sub>2.5</sub> rule, as well as to provide general updates that apply to all the NAAQS.

### **III. Effect of the January 4, 2013 D.C. Circuit Decision Regarding PM<sub>2.5</sub>**

#### **Implementation Under Subpart 4**

On January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council v. EPA*<sup>2</sup> issued a decision that remanded the EPA's 2007 and 2008 rules implementing the 1997 PM<sub>2.5</sub> NAAQS. Relevant here, the 2008 NSR PM<sub>2.5</sub> Rule promulgated NSR requirements for implementation of PM<sub>2.5</sub> in both nonattainment areas and attainment/unclassifiable areas. The Court found that the EPA erred in implementing the PM<sub>2.5</sub> NAAQS in these rules solely pursuant to the general implementation provisions of subpart 1, part D, title I of the CAA, rather than pursuant to the additional implementation provisions specific to particulate matter nonattainment areas in subpart 4. The Court ordered the EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion." *Id.* at 437.

On June 2, 2014, the EPA published a final rulemaking, *Identification of Nonattainment*

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<sup>2</sup> 706 F.3d 428 (D.C. Cir. 2013).

*Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS) and 2006 PM<sub>2.5</sub> NAAQS*, that begins to address the remand (79 FR 31566). The final rule classified all existing PM<sub>2.5</sub> nonattainment areas as “Moderate” nonattainment areas and set a deadline of December 31, 2014, for states to submit any SIP submissions, including major NNSR SIPs, that may be necessary to satisfy the requirements of subpart 4, part D, title I of the CAA, with respect to PM<sub>2.5</sub> nonattainment areas.

In a separate rulemaking process, the EPA is evaluating the requirements of subpart 4 as they pertain to nonattainment NSR for PM<sub>2.5</sub> emissions. In particular, subpart 4 includes section 189(e) of the CAA, which requires the control of major stationary sources of PM<sub>10</sub> precursors “except where the Administrator determines that such sources do not contribute significantly to PM<sub>10</sub> levels which exceed the standard in the area.” Under the Court’s decision in *NRDC*, section 189(e) of the CAA also applies to PM<sub>2.5</sub>.

Alaska submitted SIP revisions to two definitions in Alaska’s major NNSR program. In 18 AAC 50.040(i)(1), Alaska revised the definition of “regulated NSR pollutant” by adopting by reference the Federal definition of “regulated NSR pollutant” at 40 CFR 51.165(a)(1)(xxxvii), which includes precursors to both ozone and PM<sub>2.5</sub> in nonattainment areas. With respect to PM<sub>2.5</sub>, the adopted by reference definition of “regulated NSR pollutant” identifies sulfur dioxide and nitrogen oxides as regulated PM<sub>2.5</sub> precursors while volatile organic compounds (VOCs) and ammonia are not regulated PM<sub>2.5</sub> precursors in PM<sub>2.5</sub> nonattainment areas in the State. In addition, in 18 AAC 50.040(i)(1), Alaska adopted by reference the Federal definition of

“significant” at 40 CFR 51.165(a)(1)(x), which includes significant emission rates for direct PM<sub>2.5</sub> and for sulfur dioxide and nitrogen oxides as PM<sub>2.5</sub> precursors. These revisions, although consistent with the 2008 NSR PM<sub>2.5</sub> Rule developed in accordance with subpart 1 of the CAA, may not contain the elements necessary to satisfy the CAA requirements when evaluated under the subpart 4 statutory requirements. In particular, Alaska’s submission does not include regulation of VOCs and ammonia as PM<sub>2.5</sub> precursors, nor does it include a demonstration consistent with section 189(e) showing that major sources of those precursor pollutants would not contribute significantly to PM<sub>2.5</sub> levels exceeding the standard in the area. For these reasons, the EPA cannot conclude at this time that this part of Alaska’s major NNSR submission satisfies all of the requirements of subpart 4 as they pertain to PM<sub>2.5</sub> major NNSR permitting.

Although the revisions to Alaska’s major NNSR rule may not contain all of the necessary elements to satisfy the CAA requirements when evaluated under the subpart 4 provisions, the revisions themselves represent a strengthening of Alaska’s currently-approved major NNSR SIP which does not address PM<sub>2.5</sub> at all. As a result of the June 2, 2014, final rule, the State will have until December 31, 2014, to make any additional submission necessary to address the requirements of subpart 4, including addressing the PM<sub>2.5</sub> precursors VOCs and ammonia. For these reasons, the EPA is proposing to approve the major NNSR revisions at 18 AAC 50.040(i), without listing as a deficiency at this time the absence of either the regulation or evaluation of VOCs and ammonia as PM<sub>2.5</sub> precursors.

#### **IV. Alaska’s Revisions to Major NNSR**

Table 1 below summarizes the revisions submitted by the State related to major NNSR and addressed in this action, including the submittal date, the State effective date, and the title



and section of 18 AAC 50 related to the major NNSR program. Where there are multiple amendments to the same provision, the EPA limited its review to the most recently submitted amendment to that particular provision.

*Table 1. Alaska SIP Revisions to Major NNSR Addressed in This Action*

Date of submittal	State effective date	Major NNSR-related provisions of 18 AAC 50.040 revised or amended	Major NNSR-related provisions of 18 AAC 50.990 revised or amended
12/11/2009	7/25/2008	(i), (i)(7), (i)(8), (i)(9), (i)(10)	
11/29/2010	12/9/2010	(i)	
12/10/2012	9/14/2012	(i), (i)(1)(B)	
1/28/2013	1/4/2013	(i)(1)(A), (i)(1)(B), (i)(1)(B)(ii)	
7/1/2014	10/6/2013	(i), (i)(1)(B), (i)(2), (i)(4), (i)(5), (i)(6)	(40)
10/24/2014	11/9/2014	(i), (i)(1)(B), (i)(2), (i)(4), (i)(5), (i)(6)	(92)

Alaska's major NNSR program is comprised of 18 AAC 50.311 (Nonattainment Area Major Stationary Source Permits), which was previously approved on August 14, 2007 (72 FR 45378) and has not been revised since, and 18 AAC 50.040 (Federal Standards Adopted by Reference), paragraph (i), relating to 40 CFR 51.165 (Permit Requirements). Definitions for specific terms referenced by these provisions are found in 18 AAC 50.990 (Definitions). To ensure that its regulations are consistent with the EPA requirements, Alaska generally updates annually its adoption by reference citations to the Federal major NNSR regulations at 40 CFR

51.165 (Permit Requirements) in 18 AAC 50.040(i).<sup>3</sup> Because of this practice, the revisions submitted by the State and listed in Table 1 are primarily updates to make the State’s regulations consistent with updates to the Federal regulations. Other revisions are discussed below.

In the State’s December 11, 2009, submittal, exceptions were added to the major NNSR regulations at 18 AAC 50.040(i)(10), relating to the adoption by reference of “Actuals PALs,” in 40 CFR 51.165(f). Under 18 AAC 50.040(i)(10)(A), mass balance calculations, as authorized under 40 CFR 52.165(f)(12)(ii)(A), are also acceptable for activities emitting sulfur dioxide from the combustion of fuel to the extent otherwise available for activities using coatings or solvents. This includes the requirement that the emission unit is assumed to emit all of the sulfur in the fuel as sulfur dioxide. Under 18 AAC 50.040(i)(10)(B), the monitoring requirements of 40 CFR 52.21(f)(12)(iii) are applied to owners or operators using mass balance calculations to monitor plantwide applicability limitation (PAL) pollutant emissions from activities emitting sulfur dioxide from the combustion of fuel. These provisions are approvable because they are an appropriate method of determining compliance with a PAL for the narrow activity added by ADEC’s regulations.

In the State’s July 1, 2014 submittal, Alaska repealed provisions in 18 AAC 50.040(i), paragraphs (7), (8) and (9), that related to clean units and pollution control projects. The comparable Federal provisions were initially vacated by a court and then repealed by the EPA. Repeal of these provisions as a matter of state law does not affect the SIP because the EPA had

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<sup>3</sup> In some instances 18 AAC 50.040(i) does not directly adopt by reference the Federal provisions, but instead references provisions in AS 46.14.990 or 18 AAC 50.990, which, in turn, reference the Federal provisions in 40 CFR 51.165.

not previously approved these provisions into the SIP and because they are no longer elements of the Federal major NNSR program.

Alaska submitted revisions to two definitions in 18 AAC 50.990 related to major NNSR. On October 24, 2014, the State revised 18 AAC 50.040(i)(1) to adopt by reference the Federal definition of “regulated NSR pollutant” at 40 CFR 51.165(a)(1)(xxxvii) and also repealed the definition “regulated NSR pollutant” in 18 AAC 50.990(92) because the State has now adopted the Federal definition in 18 AAC 50.040(i). With these revisions, the State’s definition of “regulated NSR pollutant” at 18 AAC 50.040(i)(1) is consistent with the current Federal definition of “regulated NSR pollutant” for major NNSR and is approvable.

On July 1, 2014, Alaska revised its major NNSR regulations at 18 AAC 50.040(i)(1)(B)(2) to reference the definition of “fugitive emissions” in 18 AAC 50.990(40). In turn, 18 AAC 50.990(40) was revised to adopt by reference the Federal definition of “fugitive emissions” at 40 CFR 51.166(b)(20).<sup>4</sup> The definition of “fugitive emissions” referenced in 18 AAC 50.990(40) is consistent with the Federal definition of “fugitive emissions” for major NNSR and is approvable.

We note that in the State’s October 24, 2014 submittal, technical corrections were made to the revisions in 18 AAC 50.040(i)(2), (4), (5) and (6) that were submitted on July 1, 2014. The effect of these corrections is that the State has submitted its repeal of 18 AAC 50.040(i)(4) and no changes were made to the adoption by reference of Federal provisions at 18 AAC 50.040(i)(2), (5) and (6). The repealed provision at 18 AAC 50.040(i)(4) adopted by reference

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<sup>4</sup> The definition of “fugitive emissions” in 40 CFR 51.166(b)(20) is identical to the definition of “fugitive emissions” in 51.165(a)(1)(ix).

an exemption for fugitive emissions in 40 CFR 51.165(a)(4) that duplicates an exemption contained in the State's definition of "major stationary source" and its repeal is therefore approvable.

In summary, revisions to Alaska's major NNSR regulations in 18 AAC 50.040(i) are approvable because the submitted revisions bring the State's major NNSR program up to date with current Federal requirements and, as explained above, represent a strengthening of Alaska's currently-approved major NNSR program.

## **V. Proposed Action**

Pursuant to section 110 of the CAA and consistent with the discussion above, the EPA proposes to approve the Alaska SIP revisions submitted on December 11, 2009, November 29, 2010, December 10, 2012, January 28, 2013, July 1, 2014, and October 24, 2014 that update the adoption by reference of the Federal major NNSR program and revise the definition of "regulated NSR pollutant." The EPA has made the preliminary determination that these SIP revisions are approvable because they are consistent with the CAA and the current EPA requirements regarding major NNSR. The EPA intends to address the remaining portions of the SIP submittals that are not related to major NNSR, and have not yet been addressed, in one or more separate actions.

## **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely

approves the state's law as meeting Federal requirements and does not impose additional requirements beyond those imposed by the state's law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate,

disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 27, 2014.

Dennis J. McLerran,  
Regional Administrator,  
Region 10.

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